

760 CMR 23.00: HOUSING INNOVATIONS FUNDS

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23.01: Scope, Purpose, and Applicability

(1) The first phase of the Housing Innovations Fund (HIF) program (HIF I) was created by St. 1987, c. 226 (budget line item 3722-8879), which authorized the Department of Housing and Community Development to use up to \$30 million in general obligation bond funds for the creation of Alternative Forms of Housing for Low-income Persons and Families. HIF I was established to provide loans for Eligible Projects sponsored and developed by Non-profit Corporations.

(2) The second phase of the Housing Innovations Fund program (HIF II) was created by St. 1993, c. 494 (budget line item 3722-8899), which authorized the Department of Housing and Community Development to use up to \$30 million in general obligation bond funds for the development of Alternative Forms of Housing for Low-income Persons and Families. HIF II was established to provide loans for Eligible Projects developed by Non-profit Corporations or Limited Equity Cooperative Housing Corporations.

(3) The third phase of the Housing Innovations Fund program (HIF III) was created by St. 1998, c. 257 (budget line item 7004-8986), which authorized the Department of Housing and Community Development to use up to \$21 million in general obligation bond funds for the creation and retention of Alternative Forms of Housing for Low-income and Very Low-income Persons and Families. HIF III was established to provide loans for Eligible Projects developed by Non-profit Corporations or Limited Equity Cooperative Housing Corporations.

(4) The fourth phase of the Housing Innovations Fund program (HIF IV) was created by St. 2002, c. 244 (budget line item 7004-7013), which authorized the Department of Housing and Community Development to use up to \$35 million in general obligation bond funds for the creation and retention of Alternative Forms of Housing for Low-income and Extremely Low-income Persons and Families. HIF IV was established to provide loans for Eligible Projects developed by one or more Non-profit Corporations or Limited Equity Cooperative Housing Corporations.

(5) The fifth phase of the Housing Innovations Fund program was created by St. 2004, c. 290 (budget line item 7004-7013), the HIF V Legislation), which authorized the Department of Housing and Community Development to use up to \$50 million in general obligation bond funds for the program established pursuant to the HIF IV Legislation.

(6) The sixth phase of the Housing Innovations Fund program was created by St. 2008, c. 119, § 2 (budget line item 7004-0036) (the HIF VI Legislation) and § 6 which also established the Housing Innovations Trust Fund as M.G.L. c. 121E. M.G.L. c. 121E was established to provide financial assistance for Eligible Projects developed by one or more Non-profit Corporations or Limited Equity Cooperative Housing Corporations. Budget line item 7004-0036 authorized the Department of Housing and Community Development to use up to \$75 million in general obligation bond funds for the creation and retention of Alternative Forms of Housing for Low-income and Extremely Low-income Persons and Families.

(7) M.G.L. c. 121E establishes the Housing Innovations Trust Fund. References in 760 CMR 23.00 to funding under, for, or pursuant to M.G.L. c. 121E shall mean funding for the program described in M.G.L. c. 121E authorized by the HIF VI Legislation or any other funding for such program authorized by the Legislature.

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(8) 760 CMR 23.00 replaces prior regulations appearing at 760 CMR 40.00 (HIF I) and 760 CMR 52.00 (HIF II).

(9) In the event of any actual or potential inconsistency between or among the provisions of 760 CMR 23.00, the applicable HIF Legislation or the HIF Program Guidelines, or the loan or other documents evidencing a loan or other form of financial assistance provided under the HIF program, such provisions shall be interpreted, to the extent reasonably possible, so as to reconcile any such inconsistencies. If such provisions cannot reasonably be reconciled, the provisions of the applicable HIF Legislation, including M.G.L. c. 121E, 760 CMR 23.00, the HIF Program Guidelines, and such loan or other financing documents, in the foregoing order of priority, shall control.

23.02: Definitions

The following definitions will apply to HIF I, HIF II, HIF III, HIF IV, HIF V, and M.G.L. c. 121E:

Alternative Form of Housing. A Residential Housing Development that involves an unusual or specialized type of management or social services, an innovative financing or ownership structure, or other innovative features as determined by DHCD.

Application. An application for a loan or, for M.G.L. c. 121E, other form of financial assistance, in the format specified by the HIF Program Guidelines, including a description of a proposed project, all financing sources, and all other matters required by the applicable HIF Program Guidelines.

Creation of Housing. New construction, rehabilitation of an existing building, or the conversion of an existing non-eligible Project to an Eligible Project.

DHCD. The Department of Housing and Community Development (including, where applicable, its predecessor, the Executive Office of Communities Development).

Deferred Payment Loan (DPL). A loan secured by a mortgage on an Eligible Project which defers the repayment of principal and interest (if any) for a defined or undefined period of time.

Developer. The developer of an Eligible Project and its permitted successors and assigns. The Developer may also be the owner of the Eligible Project, but need not be the owner, so long as such Developer has control of the site pursuant to a ground lease or other instrument acceptable to DHCD, in its discretion, for a period at least equal to the term of the applicable HIF loan or, if applicable, other financial assistance and the owner assents to the developer's execution, delivery and recording of the Land Use Restriction, and executes and delivers the Land Use Restriction and such additional documentation as DHCD may require, in its discretion, regarding the rights of DHCD and/or any Financial Intermediary with respect to the site.

Eligible Project/Use (Project). The acquisition, construction, renovation and/or rehabilitation and the operation of an Alternative Form of Housing that meets the requirements of 760 CMR 23.03. Such housing may include any of the following types of housing owned and operated by a Non-Profit Corporation: Single Room Occupancy Housing, Limited Equity Cooperative Housing, Transitional Housing, [permanent or Transitional housing for the homeless](#), [shelters for survivors of domestic abuse](#), Special Needs Housing, Mutual Housing, Expiring Use Restriction Housing, and other forms of housing as determined by DHCD. For HIF IV and M.G.L. c. 121E, such housing may also include any of the following types of housing owned and operated by a Non-profit Corporation: Employer Assisted Housing, Housing in Receivership, Lease-to-purchase Housing, and Housing in College Communities. For M.G.L. c. 121E, such housing may also include Projects making Alternative Forms of Housing more accessible to senior citizens and persons with disabilities, and Municipally Sponsored Housing. For M.G.L. c. 121E, an Eligible Project may also be owned and operated by a Local Housing Authority. For housing assisted under HIF IV, HIF V, or M.G.L. c. 121E, preference shall be given to Projects that provide transitional or permanent housing for homeless

individuals and families and disabled persons.

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Employer Assisted Housing. An Eligible Project undertaken jointly with a local employer that has agreed to devote private resources to the Project, in connection with which the participating employer may obtain dedicated housing units for Low-income or Extremely Low-income employees. If funded under M.G.L. c. 121E, financial assistance for such housing may include matching funds, in a ratio to be determined by DHCD, associated with the capital costs of an employer-based program to assist employees who qualify as Low-income Persons or Families in meeting their rental or homeownership housing costs, where the details of buyer or tenant eligibility, form of assistance, limits on property value, and other requirements meet the criteria set forth in the HIF Guidelines for such a program.

Expiring Use Restriction Housing. A Residential Housing Development that is acquired by a Non-profit Corporation or a Limited Equity Cooperative Housing Corporation under Title II of the National Emergency Low Income Housing Preservation Act of 1987 or Title VI of the National Affordable Housing Act of 1990.

Extremely Low-income Person or Family. A single person or family whose adjusted income is less than or equal to 30% of the median gross income for the area in which the Project is located, adjusted for family size and region, as determined by the United States Department of Housing and Urban Development, or any successor department or agency thereto, pursuant to Section 8 of the United States Housing Act of 1937.

Financial Intermediary. The Community Economic Development Assistance Corporation, the Massachusetts Housing Finance Agency, the Massachusetts Development Finance Agency (formerly the Massachusetts Government Land Bank), a local housing authority, a redevelopment authority, a community development corporation, or, in the case of HIF IV, HIF V, or M.G.L. c. 121E, a Non-profit Corporation that has been certified by the United States Department of Housing and Urban Development as a “community development housing organization” as defined in 24 CFR § 92.2, which entity serves as the conduit for HIF loan funds and is not a member of the development team.

Financially Feasible Project. An Eligible Project that is likely to secure binding financial commitments from other funding sources which, together with HIF funds, total the budgeted amount necessary to develop and operate the Project.

~~Firm Financing Commitment. A binding written commitment to fund a HIF I, HIF II, HIF III, HIF IV, or HIF V loan, or a loan or other form of financial assistance under M.G.L. c. 121E, summarizing the terms and conditions of such loan or other financial assistance, which will be issued when the conditions of the conditional funding reservation letter (if any) have been satisfied.~~

Gross Cash Expenditures. All expenses paid out by the Project, including: all payments of principal and interest (if any) and any other debt service on outstanding loans, all operating and maintenance expenses, and reasonable payments into capital and operating reserves for the Project.

Gross Cash Receipts. All cash collections received by the Project from all sources, with the exception of documented contributions, donations and grant proceeds.

HIF Legislation. Collectively, the HIF I Legislation, the HIF II Legislation, the HIF III Legislation, the HIF IV Legislation, the HIF V Legislation, and M.G.L. c. 121E or, where the context so requires, the specific legislation applicable, respectively, to HIF I, HIF II, HIF III, HIF IV, HIF V, and M.G.L. c. 121E loans or, as applicable, other financial assistance.

HIF Program Guidelines. Guidelines issued by DHCD setting out, clarifying and further explaining 760 CMR 23.00 (and/or the prior regulations appearing at 760 CMR 40.00 [HIF I] and 760 CMR 52.00 [HIF II], as applicable), program policy and procedure. The HIF Program Guidelines shall apply to all HIF financing programs (subject always to 760 CMR 23.01(6)).

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Housing Development Agencies. Any of the authorities through which DHCD is authorized to administer the HIF program pursuant to the HIF IV Legislation, the HIF V Legislation, or M.G.L. c. 121E.

Housing in College Communities. Residential Housing intended to address the need for housing for Low-income Persons and Families and Extremely Low-income Persons and Families in communities that have experienced a particular shortage of such housing due to the demand for housing by students and faculty of institutions of higher learning; the housing may involve Eligible Projects undertaken jointly by municipalities or Housing Development Agencies and institutions of higher learning where a Non-profit Corporation or, if funded under M.G.L. c. 121E a Local Housing Authority, has been designated to develop and manage the Project(s).

Housing in Receivership. Residential Housing for which a receiver has been appointed by a court pursuant to M.G.L. c. 111, § 127I.

Land Use Restriction. An agreement by the Developer (and, as required by DHCD, by the owner of the site on which the Eligible Project is located, if other than the Developer), running with the land and restricting a Project to use as an Alternative Form of Housing for Low-income Persons or Families and, as required under the applicable HIF Legislation, Very Low-income Persons or Families or Extremely Low-income Persons or Families. Such agreement, as further described in 760 CMR 23.03(1) and 760 CMR 23.04(2)(f), shall include such terms and conditions as are imposed under the applicable HIF Legislation and/or HIF Program Guidelines or are otherwise required by DHCD, and may also include provisions relating to the Purchase Option and/or First Refusal Option (as described in 760 CMR 23.04(5)), if applicable.

Lease-to-purchase Housing Residential Housing that may be purchased by a tenant of such housing pursuant to a lease-purchase agreement between the tenant and the owner; the housing must be purchased within 36 months of entering into the lease-purchase agreement, and the homebuyer must qualify as a Low-income Person or Family at the time of entering into the lease-purchase agreement.

Limited Equity Cooperative Housing. A Residential Housing Development that is owned by a Limited Equity Cooperative Housing Corporation.

Limited Equity Cooperative Housing Corporation. A corporation established in accordance with M.G.L. c. 157B or a corporation which has added an amendment to its articles to comply with M.G.L. c. 157B; the corporation must be organized and operated primarily for the benefit of low- and moderate-income persons, and its equity, after allowance for maximum transfer value of its stock, must be permanently dedicated to providing housing to persons of low- and moderate-income or to charitable purposes.

Local Housing Authority (LHA). A local housing authority created pursuant to M.G.L. c. 121B, § 3, prior statute or special act.

Low-income Person or Family. A single person or family whose adjusted income is less than or equal to 80% of the median gross income for the area in which the Project is located, adjusted for family size and region, as determined from time to time by the United States Department of Housing and Urban Development, or any successor department or agency thereto, pursuant to § 8 of the United States Housing Act of 1937.

Municipally Sponsored Housing. An Eligible Project receiving financial assistance from the municipality in which the Project is located in a minimum amount as specified in the HIF Program Guidelines. HIF financial assistance for such housing may include matching funds, in a ratio to be determined by DHCD, associated with the costs of such a Project, provided that the amount of the HIF loan (or grant in the case of M.G.L. c. 121E) shall not exceed the percentage of Total Development Cost specified by the applicable HIF Legislation as set forth in 760 CMR 23.04(2).

23.02: continued

Mutual Housing.

- (a) a group of cooperative housing corporations which provide support services to their members, including: housing development assistance, property management assistance and training for cooperative boards; or
- (b) a Residential Housing Development, developed, owned and managed by a non-profit, tax-exempt mutual housing association in which current and future residents hold the majority membership.

Non-profit Corporation. A corporation organized under M.G.L. c. 180 which may also be required to be a 501(c)(3) organization under the Internal Revenue Code at the time of Application or Loan closing. To qualify as a Non-profit Corporation for purposes of the or HIF program, no member, shareholder, officer or employee of the corporation or its board of directors can profit, in any way, from the HIF assistance or from the Project. The Non-profit Corporation must also demonstrate, to the satisfaction of DHCD, the capability of managing all of its responsibilities to the Project.

Preservation of Housing. New capital financing for an Eligible Project that is already used for an Eligible Use. In this case, the Project can be funded through the HIF Legislation only if the Project involves:

- (a) a transfer of ownership to a Non-profit Corporation, or in the case of M.G.L. c. 121E a Local Housing Authority;
- (b) physical improvements to the real estate; and
- (c) improved forms of management and social services;
- (d) an Expiring Use Restriction Housing project; or
- (e) the preservation of an Alternative Form of Housing, as determined by DHCD.

Residential Housing Development/Residential Housing. Property that is predominantly used for housing and is in compliance with applicable laws and ordinances.

Single Room Occupancy Housing. A Residential Housing Development that contains single rooms to be leased to individuals, which is not a student dormitory, a religious order residence, or a private club, and which is subject to such other specific requirements as may be imposed by DHCD.

Special Needs Housing. A Residential Housing Development that provides special design features or support services for residents with special needs. Special needs residents may include, but are not limited to: persons with AIDS/HIV, battered women, and consumers of the services of the Massachusetts Department of Mental Health or Department of Mental Retardation.

Total Development Costs. Total hard and soft costs of developing an Eligible Project, including the costs to purchase, design, construct and finance the Project.

Transitional Housing. A Residential Housing Development that provides shelter and social services to homeless persons or persons in need of a supportive housing environment. This type of housing has as its purpose transition of its residents to independent living within a reasonable period of time.

Very Low-income Person or Family. A person or family whose adjusted income is less than or equal to 50% of the median gross income for the area in which the Project is located, adjusted for family size and region, as determined by the United States Department of Housing and Urban Development, or any successor department or agency thereto, pursuant to § 8 of the United States Housing Act of 1937.

23.03: Eligible Projects/Uses

A HIF loan or other form of financial assistance may only be made for a Residential Housing Development which is a Financially Feasible Project and which:

23.03: continued

- (1) as required by the applicable HIF Legislation, will be subject to a Land Use Restriction for the benefit of DHCD, running with the land on which the Project is located and duly registered/filed, requiring that the land shall be used for the purpose of providing an Alternative Form of Housing (whether rental or ownership housing), which Land Use Restriction shall not be released until either the balance of the principal and interest for such loan shall have been repaid in full (subject to applicable restrictions on prepayment), or a mortgage foreclosure deed on the first-priority mortgage shall have been recorded; and which:
- (a) in the case of a HIF I, HIF II, or HIF III Project, reserves at least 50% of the housing units for occupancy by Low-income Persons or Families. DHCD may require that an additional percentage, not to exceed 25%, be reserved for Very Low-income Persons or Families. In no case may an Eligible Project have fewer than three units reserved for Low-income Persons or Families and/or Very Low-income Persons or Families, and, for Projects in which there are different types of units, may require a minimum number of the various types of units;
 - (b) in the case of a HIF IV, HIF V, or M.G.L. c. 121E Project, reserves at least 50% of the housing units for occupancy by Low-income Persons or Families, and of such reserved units reserves at least 50% of the housing units (that is, 25% of the total housing units) for Extremely Low-income Persons or Families. DHCD may require that an Eligible Project must have, at a minimum, at least three units reserved for Low-income Persons or Families and/or Extremely Low-income Persons or Families, and, for Projects in which there are different types of units, may require a minimum number of the various types of units;
- (2) is in, or upon completion will be in, compliance with the applicable HIF Legislation and all other applicable federal, state or local requirements including the Americans with Disabilities Act of 1990, and M.G.L. c. 79A, and 105 CMR 410.000;
- (3) is developed and owned by one or more Non-profit Corporations (or an entity or entities in which one or more Non-profit Corporations have a controlling interest), a Limited Equity Cooperative Housing Corporation, or for M.G.L. c. 121E a Local Housing Authority;
- (4) involves the Creation of Housing, the Preservation of Housing or the refinancing of an existing HIF loan if permitted under 760 CMR 23.04(3); and
- (5) in the case of Housing in Receivership [HIF IV, HIF V, and M.G.L. c. 121E], meets the following criteria:
- (a) the HIF loan is necessary to make repairs required for the housing to comply with the state sanitary code and to maintain its habitability; and
 - (b) the court that has appointed the receiver enters an order:
 - 1. authorizing the receiver to borrow HIF funds up to the amount of the proposed HIF loan, on the anticipated terms, and to assign its priority lien to the lender to secure the HIF loan;
 - 2. authorizing the lender, upon the borrower's breach of the conditions of the HIF loan, to foreclose on its interest under the lien and setting forth an adequate process for such a foreclosure; and
 - 3. requiring the receiver to repay any balance of the HIF loan in full upon termination of the receivership, unless it has previously been repaid.

23.04: Type of Loans, Loan Terms, Loan Conditions, Other Financial Assistance

- (1) Loan Types. Eligible Projects may receive HIF loans in three areas: acquisition loans, construction/rehabilitation loans, and permanent loans. All loans will be structured as Deferred Payment Loans (DPL). Developers shall complete the application process in accordance with the appropriate HIF Program Guidelines.
- (2) Loan Terms. All loans under the HIF program shall be made upon the following terms and such other terms as are included in the HIF Program Guidelines and/or DHCD's loan documents:
- (a) Loan Proceeds. the proceeds of the loan shall be used solely for the development of the Eligible Project approved by DHCD.

23.04: continued

(b) Loan Amount.

1. the amount of a HIF I loan shall be set by DHCD according to the HIF Program Guidelines; the amount of a HIF II loan shall not exceed 30% of the Total Development Cost of the Project; the amount of a HIF III loan shall not exceed 50% of the Total Development Cost of the Project; and the amount of a HIF IV or, HIF V, ~~or M.G.L. c. 121E~~ loan shall not exceed 50% of the Total Development Cost of the Project (except that a HIF IV or, HIF V, ~~or M.G.L. c. 121E~~ loan for a battered women's shelter for survivors of domestic abuse may not exceed the lesser of 80% of the Total Development Cost or \$2.5 million); this subsection 2 (b) (1) shall not apply to M.G.L. c.121E loans.

2. DHCD may establish a maximum percentage of the Total Development Cost and dollar limits (per unit or per Eligible Project, or both) in the HIF Program Guidelines, to which the loan would also be subject.

(c) Loan Period.

1. the original term of a HIF I loan shall be up to 40 years. At the maturity date, the term may be extended at the discretion of DHCD with the consent of the owner if the Project continues to meet the HIF requirements.

2. the original term of a HIF II, HIF III, HIF IV, HIF V, or M.G.L. c. 121E loan shall be up to 30 years. At the maturity date, the term may be extended for additional periods of up to ten years each at the discretion of DHCD, with the consent of the owner, if the Project continues to meet the HIF affordability requirements, as applicable, and the requirements for an extension under the applicable HIF Legislation, the HIF Program Guidelines, and the loan documents for such loan have been satisfied.

(d) Interest Rate. interest rates for the loans shall be fixed at rates determined by DHCD, in consultation with the Office of the Treasurer of the Commonwealth.

(e) Loan Payments. because all HIF loans are structured as DPLs, principal and interest payments will be deferred for the loan period unless any of the following occurs:

1. Projects funded under HIF I have Gross Cash Receipts for a fiscal year exceeding Gross Cash Expenditures by 115%; or

2. Projects funded under HIF II, HIF III, HIF IV, or HIF V, ~~or M.G.L. c. 121E~~ have Gross Cash Receipts for a fiscal year exceeding Gross Cash Expenditures by 105%; or

3. Projects funded under any of the HIF Legislation default on the terms of the loan; this subsection (2) (e) shall not apply to M.G.L. c.121E loans.

Within 45 days after the end of each Project's fiscal year, the owner shall supply DHCD or the Financial Intermediary with the necessary financial statements needed to determine the amount of payment necessary for the period; all amounts paid pursuant to 760 CMR 23.04(2)(e) will be applied first to the payment of interest and then to principal.

(f) Land Use Restriction. the Developer/owner of the Project shall execute and record at the appropriate Registry of Deeds or Registry District of the Land Court, or both, a Land Use Restriction. The Land Use Restriction shall only be released:

1. upon payment in full of all amounts due under the HIF loan (provided, however, that no prepayment shall be allowed under the loan prior to the maturity date as defined in the promissory note for such loan; or

2. upon foreclosure of the subject Project by the holder of a *bona fide* first-priority mortgage; or, with DHCD's consent, a *bona fide* mortgage that was senior to the lien of the HIF mortgage loan at the time of loan closing, or to which the HIF mortgage loan has been duly subordinated.

(g) Mortgage Lien. the loan shall be secured by a mortgage lien against the Project, which may be junior only to such senior mortgage liens as are permitted by DHCD.

(h) Refinancing. A HIF ~~H, HIF III, HIF IV, HIF V, or M.G.L. c. 121E~~ loan may be refinanced during the term of the loan only with the prior written approval of DHCD. in the following cases:

~~1. the refinancing would result in lower costs to the Commonwealth for the Project; or~~

~~2. the refinancing is necessary to effect extraordinary repairs or maintenance which have been approved by DHCD; and the refinanced loan is due and payable on or before the maturity date of the term of the original loan.~~

(3) Refinancing Existing HIF Loan with Subsequent HIF Loan. HIF II loans may be made to refinance HIF I Projects in existence before January 14, 1994 and which meet additional eligibility criteria in the HIF II Guidelines. HIF III loans may be made to refinance HIF I

Projects or HIF II Projects in existence before promulgation of the HIF III regulations and which meet additional eligibility criteria in the appropriate HIF Program Guidelines. HIF IV or HIF V loans may be made to refinance HIF I or HIF II Projects in existence prior to July 31, 2002 and which meet additional eligibility criteria in the appropriate HIF Program Guidelines.

23.04: continued

(4) In addition to Deferred Payment Loans, Eligible Projects under M.G.L. c. 121E may also receive assistance in the form of capital grants, subsidies, or mortgage insurance guarantees and other credit enhancements, in the minimum amount required for a Financially Feasible Project. Developers shall complete the application process for such assistance in accordance with the appropriate HIF Program Guidelines. 760 CMR 23.04(2)(a), (b), (f), and (h) shall apply to all such assistance. DHCD may provide assistance in the form of a capital grant, subsidy, or mortgage insurance guarantee or other credit enhancement where it finds that such form of assistance is reasonable necessary to meet the requirements of other financing sources for the Project.

(5) Purchase Option and First Refusal Option. As a condition of each HIF IV or HIF V loan, or loan or other assistance provided under M.G.L. c. 121E, DHCD shall be granted a purchase option and a first refusal option to purchase the Project, in accordance with the following terms:

(a) Purchase Option. Upon the expiration of the term of the affordability restrictions imposed in the Land Use Restriction for a Project, DHCD shall have an option to purchase the Project from the Developer/owner at a price equal to the then-current appraised value of the Project less the total outstanding balance of all principal, interest and any other charges payable under the HIF IV or HIF V loan or, in the case of M.G.L. c. 121E, less any remaining obligations of the Developer/owner under any other form of HIF financial assistance. The appraised value of the Project shall be determined in the manner described in the HIF IV or HIF V Legislation or M.G.L. c. 121E, as applicable, and in accordance with the HIF Program Guidelines and DHCD policies, as applicable. DHCD may exercise the Purchase Option by sending notice to the Developer/owner of its intention to exercise the Purchase Option by certified mail and recording/filing a copy of such notice in the Registry of Deeds or Registry District of the Land Court within 120 days after the expiration of the term of the affordability restrictions imposed by the Land Use Restriction. If DHCD fails to exercise the Purchase Option by such option exercise deadline, DHCD shall automatically be deemed to have waived the Purchase Option, and such Purchase Option shall automatically terminate.

(b) First Refusal Option. If at any time the Developer/owner of a Project wishes to sell, transfer or otherwise dispose of (transfer) the Project, or any part thereof, prior to DHCD's exercise of the Purchase Option, and receives a *bona fide* third-party offer for the same, the Developer/owner shall send a notice to DHCD by regular and certified mail, return receipt requested, setting forth the Developer/owner's intention to transfer all or part of the Project and the terms of any *bona fide* offer by a third party to purchase the Project (or the applicable portion(s) thereof). DHCD shall have the right to purchase the Project (or the portion(s) thereof to which such offer relates) at the same price and on the same terms as those contained in such offer. DHCD may exercise the First Refusal Option by sending notice to the Developer/owner of its intention to exercise the First Refusal Option by certified mail and recording/filing a copy of such notice in the Registry of Deeds or Registry District of the Land Court within 120 days after its receipt of the Developer/owner's notice. If DHCD fails to exercise the First Refusal Option by such option exercise deadline, DHCD shall automatically be deemed to have waived the First Refusal Option, and such First Refusal Option shall automatically terminate (but only with respect to the portion(s) of the Property to which the third-party offer relates); however, if the sale contemplated in the third-party offer is not effected on the same terms and conditions as those contained in the offer, as described in the Developer/owner's notice, within six months after DHCD's receipt of the Developer/owner's notice, or if any of the material terms of such third-party offer shall be revised, DHCD's First Refusal Option shall be revived. If a Developer/owner's notice relates to a proposed transfer of only a portion of the Project, the First Refusal Option shall remain in effect with respect to all remaining portions of the Project.

(c) DHCD may Assign the Purchase Option or the First Refusal Option to a Qualified Developer. A Qualified Developer is a developer who:

1. is a Non-profit Corporation or is a Local Housing Authority ;
2. has completed an application with respect to its proposed purchase of the Project, in the format specified by DHCD (the "Purchase Application") (DHCD will issue a "Notice of Project Availability" that will include instructions for completing a Purchase Application for this purpose);

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3. has been selected to purchase the Project based on DHCD's review and underwriting of the Purchase Application;
 4. agrees that upon purchasing the Project, it will execute a Land Use Restriction providing for the Project to remain an Eligible Project for a term of at least 40 years; and
 5. provides any additional due diligence materials not part of the Purchase Application that may be required by DHCD
- (d) If DHCD exercises the Purchase Option, DHCD or its assignee shall have 120 days after the expiration of the option exercise deadline specified in 760 CMR 23.04(4)(a) (and not less than 240 days after the expiration of the term of the affordability restrictions imposed by the Land Use Restriction) to purchase the Project. If DHCD exercises the First Refusal Option, DHCD or its assignee shall have 120 days after the expiration of the option exercise deadline specified in 760 CMR 23.04(4)(b) (and not less than 240 days after the DHCD's receipt of the Developer/owner's notice) to purchase the Project. Promptly upon request by DHCD or its assignee, the owner will provide DHCD or its assignee with such due diligence material and such opportunity to inspect the Project as would be reasonably required by a third-party purchaser. The date for the acquisition closing under the Purchase Option or the First Refusal Option, as applicable, may be extended by agreement of the parties and the agreed-upon extension shall be recorded/filed in the Registry of Deeds or Registry District of the Land Court. DHCD or its assignee may extend the date for the acquisition closing to a reasonable date, if it determines that additional time is needed due to delays in closing preparations caused by the Developer/owner. After delivering notice of its intent to exercise the Purchase Option or First Refusal Option, DHCD may at any time terminate its exercise of the Purchase Option or the Right of First Refusal, in its discretion, without incurring any damages or other liability, if it determines it is not in the best interests of DHCD to effect the purchase (but such termination right shall apply to DHCD only, and not to any assignee).
- (e) DHCD or its assignee may purchase or otherwise acquire the Project only for the purposes of preserving or providing affordable housing, which shall include a requirement that the Project remain affordable for a term of at least 40 years.

(6) Application Process. Application procedures for HIF loans and, as applicable other assistance, are specified in the appropriate HIF Program Guidelines. DHCD reserves the right to hold competitive funding rounds for HIF loans and, as applicable, other assistance.

23.05: Findings

In approving Eligible Projects for HIF funding, DHCD shall make the following findings:

- (1) Provision of Housing. the Project is within the scope of the applicable HIF Legislation, and may reasonably be expected to contribute to the provision of Alternative Forms of Housing for Low-income Persons and Families;
- (2) Public Benefit and Purpose. the Project will be of public benefit and for a public purpose and any benefit to private parties or individuals, other than the Low-income Persons or Families for whom housing is being provided, shall be indirect and incidental and not the purpose of the Project;
- (3) Conformance with Law. the Project, when complete, will conform to all applicable laws and regulations;
- (4) Success. there is a reasonable expectation that the Project will be successful.
- (5) No Default. the Developer is current on all existing mortgage obligations with the Commonwealth of Massachusetts or any political subdivisions thereof;
- (6) Housing in Receivership. With respect to Projects involving Housing in Receivership, DHCD shall also make the findings to confirm that the Project satisfies the criteria set forth in 760 CMR 23.03(5).

23.06: Waiver Provisions

If any of the requirements relating to repayment set forth in 760 CMR 23.04(2) would cause an Eligible Project to become ineligible for federal funds that would otherwise be available for an Eligible Project, the Undersecretary of DHCD may modify or waive that requirement to allow the use of such federal funds; provided, however, that the interests of the Commonwealth shall remain protected. The Undersecretary of DHCD may also waive any provision of 760 CMR 23.00 not required by the applicable HIF Legislation, if the Undersecretary determines that such action is advisable and in the public interest.

REGULATORY AUTHORITY

760 CMR 23.00: M.G.L. c. 23B; St. 1987, c. 226 (budget line item 3722-8879); St. 1993, c. 494 (budget line item 3722-8899); St. 1998, c. 257 (budget line item 7004-8986); St. 2002, c. 244 (budget line item 7004-7013); St. 2008, c. 119 (budget line item 7004-0036); [St. 2013, c. 129 \(budget line item 7004-0046\)](#) and [§§ 6, 7, 8, 9, 10.](#)